

**CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON**

LIVABLE COMMUNITIES COALITION,)	CPSGMHB Case No. 05-3-0018
)	
Petitioners,)	(LCC)
)	
v.)	
)	
CITY OF WOODINVILLE,)	ORDER OF DISMISSAL
)	
Respondent.)	
)	

I. BACKGROUND

On February 22, 2005, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from the Livable Communities Coalition (**Petitioner** or **LCC**). The matter was assigned Case No. 05-3-0018, and is hereafter referred to as *Livable Communities Coalition v. City of Woodinville*. Board member Edward G. McGuire is the Presiding Officer (**PO**) for this matter. Petitioner challenges the City of Woodinville’s (**Respondent** or **Woodinville**) adoption of Ordinance No. 375 amending the Woodinville’s critical areas regulations. The basis for the challenge is noncompliance with critical areas requirements and goals of the Growth Management Act (**GMA** or **Act**).

On February 23, 2005, the Board issued its “Notice of Hearing” (**NOH**) in the above captioned matter, setting the date for the prehearing conference. The Board noted in the NOH that it had serious concerns¹ regarding the timeliness of the filing of LCC’s PFR. See NOH, at 4.

On March 3, 2005, the Board received “Respondent City of Woodinville’s Motion for Order of Dismissal” (**Woodinville Motion**). Attached to the Woodinville Motion were six exhibits, labeled A-F, as follows: A) Copy of Ordinance No. 375; B) Declaration of Sandra Parker – Woodinville City Clerk; C) Affidavit of Publication from the Woodinville Weekly; D) Declaration of J. Zachary Lell – Woodinville City Attorney; E) Excerpt [p.4] from the Board’s 2/23/05 NOH; and F) Copy of Livable Communities Coalition’s Petition for Review.

On March 11, 2005, the Board received LCC’s “Motion to Dismiss/Withdraw Petition for Review” (**LCC Motion**). The LCC motion acknowledges that the LCC PFR was not timely filed.

¹ Appendix A sets forth the Board’s Findings of Fact and Conclusions of Law on this matter.

III. ORDER

Based upon review of the Petition for Review, the briefs and materials submitted by the parties, the Act, Board rules, and prior decisions of this Board and other Growth Management Hearings Boards, the Board enters the following ORDER:

In light of the Livable Communities Coalition's "Withdrawal" of the petition for review, the matter of *Livable Communities Coalition v. City of Woodinville*, CPSGMHB Case No. 05-3-0018 is **dismissed with prejudice**. All further scheduled hearings on this matter are **cancelled** and the case is **closed**.

So ORDERED this 14th day of March, 2005.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

Bruce C. Laing, FAICP
Board Member

Edward G. McGuire, AICP
Board Member

Margaret A. Pageler
Board Member

Note: This Order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration pursuant to WAC 242-02-832.

APPENDIX A

Findings of Fact and Conclusions of Law

The Board finds and concludes:

1. The Board's NOH raised the question of the timeliness of the filing of the PFR. *See* NOH, at 4.
2. RCW 36.70A.290(2) requires PFRs that challenge a jurisdiction's adoption or amendment to a GMA comprehensive plan or implementing development regulation to be filed "within sixty days after publication."
3. The City of Woodinville adopted Ordinance No. 375 on December 13, 2004. *See* Ordinance No. 375, at 5; and Attachment A to Woodinville Motion.
4. Ordinance No. 375 was published in the Woodinville Weekly, the official newspaper of Woodinville, on December 20, 2004. *See* Ordinance No. 375, at 5; Declaration of Sandra Parker, Attachment B to Woodinville Motion; and Affidavit of Publication from the Woodinville Weekly, Attachment C to Woodinville Motion.
5. LCC's PFR was filed with the Board by fax on February 18, 2005 at 18:23 [6:23 p.m.]. *See* LCC PFR Board fax transmittal header.
6. The Board also received a copy of the PFR in the mail on February 22, 2005. *See* LCC PFR.
7. The last day to file a PFR challenging Ordinance No. 375 [the 60th day from the date of publication] was February 18, 2005. *See* RCW 36.70A.290(2) and WAC 242-02-060.
8. The Board's Rules of Practice and Procedure provide, "A facsimile document will only be stamped "received" by the Board between the hours of 8:00 a.m. and 5:00 p.m. excluding Saturdays, Sundays, and legal holidays. Any transmission not completed before 5:00 p.m. will be stamped received on the following business day. The date and time indicated on the board's facsimile machine shall be presumptive evidence of the date and time of receipt of transmission." *See* WAC 242-02-240(2)(a).
9. As noted above, the Board's facsimile machine indicates that the LCC PFR was filed on [Friday] February 18, 2005, but one hour and 23 minutes after [18:23 or 6:23 p.m.] the close of business [5:00 p.m.]. *See* LCC PFR fax transmittal.
10. Pursuant to WAC 242-02-240(2)(a), the LCC PFR was stamped "received" by the Board on February 22, 2005 – the 64th day after publication of Ordinance No. 375; since there was an intervening weekend and Monday, February 21, 2005 was a legal holiday.
11. The LCC Motion acknowledges that the PFR was not timely filed. *See* LCC Motion, at 2.
12. Therefore, pursuant to RCW 36.70A.290(2), the LCC PFR was *untimely*, and the Board does not have jurisdiction to review the petition.